HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 11415 OF 1997

Between:

Executive Engineer, I & PD, IB Divn, Warangal

… Petitioner

and

D. Thawaria and another

… Respondents

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO. 11415 OF 1997

ORAL ORDER:

Aggrieved by the award of the Industrial Tribunal-cum-Labour Court, Warangal in I.D. No. 33 of 1992 dated 17.6.1994, whereby the retrenchment notice dated 11.7.1980 issued by the petitioner herein was set aside and the petitioner was directed to give the benefit of continuity of service to the workman from the date of termination, to regularize his services as 'Laskar' and to pay the difference of wages from the date of filing of the I.D., the present writ petition is filed.

The award in I.D.No.33 of 1992 dated 17.6.1994 was passed consequent upon a reference made by the State Government on 6.2.1992 whether the A.P. (PWD) Irrigation Employees Union, Warangal, was justified in demanding re-appointment of Sri D. Thawaria (workman) as 'Lascar' and to regularize his service in the cadre of 'Laskar' from the year 1980 onwards.

Before the Industrial Tribunal, while the workman examined himself as WW-1, one Sri B. Chukkaiah was examined as MW-1, on behalf of the petitioner. The workman marked Exs.W-1 to W-11, of

which Exs.W-3 to W-11 were the statements showing his service particulars. While the genuineness of these certificates was disputed by MW-1, the Industrial Tribunal-cum-Labour Court disbelieved his evidence and relied on these certificates, to hold that the workman was continuing in the service of the petitioner as a 'Laskar'. On the ground that the dispute was raised 12 years after his retrenchment, back wages till the date of filing of the I.D. were denied to the workman.

Learned Government Pleader, appearing on behalf of the petitioner, would submit that despite the fact that the Industrial Tribunal-cum-Labour Court had directed reinstatement of the workman with back wages from the date of filing of the I.D., the workman did not continue working with the petitioner herein from 2001 onwards. Sri V. Hari Haran, learned counsel for the workman, would submit that while the workman was reinstated into duty, pursuant to the award of the Tribunal, he is unaware of what transpired subsequent to the filing of the present writ petition and whether the workman is still employed with the petitioner or not.

While the evidence on record may justify the conclusions arrived at by the Tribunal in so far as the reinstatement is concerned, it is well-settled that violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 does not by itself confer any right on an employee to claim that his services should be regularized ***[MADHYAMIK SIKSHA PARISHAD V. ANIL KUMAR MISHRA (AIR 1994 SC 1638)].*** The Constitution Bench of the Supreme Court in

SECRETARY, STATE OF KARNATAKA V. UMA DEVI (1.) held that no right accrues in favour of a daily wage employee to claim regularization.

The award, in so far as the petitioner was directed to regularize the services of the respondent-workman, must therefore be set aside. With regards payment of wages from the date of filing of the I.D., while the Tribunal undoubtedly has the power to mould the relief, no explanation, much less a reasonable explanation, has been furnished by the workman for the undue delay of 12 years in raising the dispute. The Tribunal has not chosen to assign any reasons as to why the I.D. should have been entertained after such a long lapse of time. The award in so far as the petitioner was directed to be paid back wages, in the absence of any specific reasons in this regard being assigned by the Tribunal, must also be set aside. Since the workman had raised the dispute after an inordinate delay of 12 years, there was no justification for the Tribunal to have directed continuity of service which, in effect, would require even this period of 12 years also to be treated as on duty. Except to the limited extent that the workman was directed to be reinstated into service, the Award of the Tribunal is set aside. Needless to state that the order now passed does not preclude the petitioner herein from taking action against the respondent-workman for his unauthorized abstention from duty from 2001 onwards.

The writ petition is disposed of accordingly. No costs.

RAMESH RANGANATHAN, J

DATE: 2.3.2007

CVM

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1. (2006) 4 SCC 1